IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

OP.No. 23451 of 1999(S)

ORDER IN RA 255/COCH/98 IN ITA.697/COCH/1995 OF INCOME TAX APPELLATE TRIBUNAL,COCHIN BENCH

.....

PETITIONER:

THE COMMISSIONER OF INCOME-TAX,
TRIVANDRUM.

BY STANDING COUNSEL, GOVT. OF INDIA (TAXES)
SRI.P.K.RAVINDRANATHA MENON (SR.)
SRI.GEORGE K. GEORGE

RESPONDENT:

SRI.P.GOPALAKRISHNAN NAIR, CONTRACTOR,
'LEKSHMI NIVAS', PERUNTHANNY, TRIVANDRUM.

BY ADV. SRI.THOMAS VELLAPPALLY
SRI.A.KUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.No.23451 of 1999-S

Dated, this the 27th day of July, 2007

JUDGMENT

H.L.Dattu, C.J.

The Revenue has filed this petition under Section 256(2) of the Income Tax Act, 1961 ('Act' for short), inter alia, requesting us to direct the Income Tax Appellate Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.697 of 1995 dated 5th March, 1998 for the assessment year 1991-92. The questions of law raised by the Revenue are as under:

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in deleting the addition amounting to Rs.1,93,030/- which represented secured advance received by the assessee during the preceding previous year and claimed as a deduction?
>
> 2. Whether, on the facts and in the circumstances of the case is not the order of the Tribunal, unsupported by material, without independent consideration, based on the submission of the Counsel and (to put in the language of the Supreme Court in 233 ITR 166) perverse?"

(2) The Tribunal has allowed the appeal filed by the assessee. The Revenue had filed an application under Section 256(1) of the Act requesting the Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.697 of 1995 for the assessment year 1991-92. The Tribunal has rejected the application.

(3) We have carefully perused the order passed by the Tribunal and also the questions of law raised by the Revenue for consideration and decision by this Court. In our opinion, the questions of law raised by the Revenue require consideration by this Court. Therefore, a direction requires to be issued

to the Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.697 of 1995 dated 5.3.1998 for the assessment year 1991-92.

(4) Accordingly, the following:

Order

i) The petition is allowed.

ii) A direction is issued to the Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.697 of 1995 dated 5.3.1998 for the assessment year 1991-92 for consideration and decision by this Court, as expeditiously as possible.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns